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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

2005 JAN 19 P 3:04

UNITED STATES)

v.)

DARREN FRANKLIN)

U.S. DISTRICT COURT
DISTRICT OF MASS

NO. 04-10117-RWZ

AFFIDAVIT OF DEFENDANT

I, Darren Franklin, make the following statements under the pains and penalties of perjury:

1. I am the defendant in the above-entitled case, and I make this affidavit in support of Defendant's Motion to Suppress Evidence. This affidavit is based upon my personal knowledge of the facts and circumstances set forth herein.

2. In April, 2004, I was living with my girlfriend, Fania Hemingway, and her two children in an apartment at 159 Grove Street, Brockton, Massachusetts. Although the lease for the apartment was in Ms. Hemingway's name, we had been living together since September, 2003, and I contributed to the payment of the rent.

3. In the early morning hours of April 15, 2004, I was awakened by the telephone ringing. As a result of the telephone call, I learned that the police were outside the apartment building and I believed that they wanted me to come out. Fearing for the safety of my girlfriend and her children, I decided to surrender myself to the police.

4. I went down a flight of stairs to the courtyard in front of the apartment and went outside. Police officers ordered me to put down the things I was carrying my hands (a cell phone, my car keys, and a bag), to lie down on the ground, and to crawl over to where the police officers were standing. After I complied with their order, I was placed under arrest, handcuffed, and frisked. I believe that one of the officers retrieved my car keys and gave them to Ms. Hemingway, along with some cash that I had on my person.

5. Sometime later one of the officers asked me if I would consent to a search of my car which was parked on the street near the apartment. I did not give my consent. Despite my refusal to consent, I believe that this officer obtained my car keys from Ms. Hemingway by telling her that I had in fact consented to the search. I believe that the officer opened the trunk of my car with the keys and seized a quantity of cocaine and marijuana.

6. An officer also asked me if I would consent to a search of the apartment I shared with Ms. Hemingway. I did not give my consent. Despite my refusal to consent, I believe that this officer told Ms. Hemingway that I had consented to a search of the apartment and that, as a result, Ms. Hemingway gave her consent to a search. I believe that magazine for a firearm and a .40 caliber bullet were seized as a result of a search of the apartment.

7. I believe that the searches of my car and my apartment were conducted without a warrant or other justification in violation of the Fourth Amendment, and that the drugs and other evidence seized pursuant to the searches should be suppressed.

Sworn to and subscribed this 13 day of Nov, 2004.

Darren Franklin
Darren Franklin